

UNITED STAT EPARTMENT OF COMMERCE Pat nt and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	· FIRST NAME	D APPLICANT		TTY, DOCKET NO.
09/239,873	01/29/99 LUHMAN			C LL11.12-0040	
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KINNEY & LA	NGE. P.A.			LEVY N	· · · · · · · · · · · · · · · · · · ·
THE KINNEY & LANGE BUILDING				ARTUNIT	PAPER NUMBER
312 SOUTH THIRD STREET MINNEAPOLIS MN 55415-1002		,	1616	13	
				DATE MAILED: 07/16/01	

	This is a communication from the examiner COMMISSIONER OF PATENTS AND TRAD	in charge of your application DEMARKS			
32		OFFICE ACT	ION SUMMARY		
	Channes has to communication (a) filed a	4/101	O)		
	Responsive to communication(s) filed of	n			
	This action is FINAL.				
	Since this application is in condition for accordance with the practice under Ex	allowance except for for parte Quayle, 1935 D.C.	mai matters, prosecution 11; 453 O.G. 213.	as to the merits is close	d in
As	shortened statutory period for response to	o this action is set to exc	_{tre.} 3	month(s), or thirty da	e de la companya de l
wh the	ichever is longer, from the mailing date of expelication to become abandoned. (35 l 36(a).	this communication. Fa	ilure to respond within the	a period for response will o	OURA
<i>p</i> .			LE EXPLOYED THE		A Section 1
UII ·	sposition of Claims			And the second	E A THE THE
7	Claim(s) 1-95			s/are pending in th	e application.
	Of the above, claim(s)	1215-27	· · · · · · · · · · · · · · · · · · ·	A PARTIE CONTRACTOR	onsideration:
	Claim(s) 1-4.8-11/3	107877	L 20 110 2	Lu La Billa b/are	
	Claim(s)	11,20,37	I 30 - 43 ***	is/arë ob	
	Claim(s)	1 1 1 1 1 1 1 1 1 1 1 1	are sub	ject to restriction or election	The state of the state of the state of
Ар	plication Papers				
	See the attached Notice of Draftsperson	's Patent Drawing Reviè	w PTO-948	7	
, 🗆	The drawing(s) filed on	ورياهما فأرازان والمراد	is/are objected to	by the Examiner.	
	The proposed drawing correction, filed	n		is [approved [1] d	Sapproved.
	The specification is objected to by the E The oath or declaration is objected to by				
Pri	ority under 35 U.S.C. § 119				
	Acknowledgment is made of a claim for	foreign priority under 35	U.S.C. § 119(a)-(d).		
.[All Some* None of the (CERTIFIED copies of the	priority documents have	been	
	received.	2			
	received in Application No. (Series (Code/Serial Number)		The same of the sa	and the
	received in this national stage applic		nal Bureau (PCT Rule 17	.2(a)).	•
1	*Certified copies not received:				<u></u>
	Acknowledgment is made of a claim for	domestic priority under 3	5 U.S.C. § 119(e)	*	V . Y
A 44.			*		
All	achment(s)	, ,		*	-
প্ত	Notice of Reference Cited, PTO-892		* *****	The state of the s	The state and the
Ŏ	Information Disclosure Statement(s), PT	O-1449, Paper No(s)	magnification of the section	منهم المستقدم المراجع ا	The state of the s
	Interview Summary, PTO-413			2.656	
	Notice of Draftperson's Patent Drawing F	Review, PTO-948		مسل	禁酒
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Receipt is acknowledged of Amendment of 10/16/00.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5-7, 12; 15-27 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected inventions and species, the requirement having been traversed in Paper No. 7.

Claims 1-4, 8-11, 13, 14, 28-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Merensalmi 4127676.

The rejection of record is maintained.

New claims are taken from rejected claims 1 and 10.

Claims 1-4, 8-11, 13, 14 and 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merensalmi in view of Baalstud et al.

New claims are taken from rejected claims 1 and 10.

Claims 1-4, 8-11, 13, 14 and 28-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 are of copending Application No. 09/338314. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record is maintained.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Applicant's arguments filed (%)/6/00 have been fully considered but they are not persuasive. Applicant argues the restriction and election requirements, but fails to sate theat (1) the restricted groups are obvious variants of each other and (2) the species are also obvious variants or equivalents of each other such a declaration by applicant would negate restriction and species requirement. Absent this declaration, the species are seen to be patentably distinct feeding a cow a tablet is not the same as feeding ad lib, which is not the same as inserting a device in the throat to administer a medicament or feed, which is not the same as parenteral administration or of surgical manipulation, followed by insertion through the surgical area. Neither are the restricted groups seen as patentably the same; the production) of a feed is not the same as the feed itself, or the process of administering it to the animal. The process are both independent of each other and distinct, one from the other.

As to the art rejections, applicant argues merensaline shows a fat decrease in %; no increase in milk components, and no profection; further, no is vivo testing is shown. Applicant argues in essence, Baalsrud is cited for background information. As to the double patenting rejection, applicant awaits allowance.

Examiner finds that Merensalmi does what applicant claims - feeds sugar to cows - thus, inherently, the same effects result - Merensalmi does specify an increase milk yield - the % increase maybe low, or negative, yet total amount be higher than without feeding. As to Baalsrud, in essence, it was cited as an indication of rumen - protected feed administration.

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However, merensalmi does state that the sugar alcohols are sufficiently intact (col. 2, lines 49-57). As to the double patenting, it is maintained, as no allowance is yet evident.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 8-11, 13, 14 and 28-37 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. These claims are beyond the scope of the specification, which clearly states (p. 3) that feeding of sugar results in no increase in total solids or alcohols other component content protection is critical claims 1 and 10 are interpretative.

Claims 1-4, 8-11, 13, 14 and 28-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are ambiguous, in accord with applicants arguments. Arguments and p.3 of the specification fead one to conclude normal feeding, without sufficient protection to prevent

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catabolism of sugar alcohols in the rumen can not result in the claimed component increases.

Claims 1 and 10 do not have restrictions permitting of recognition of a need to prevent alteration of the sugar alcohols. The added features of claims 2, 3, and 4 seem to be repetitive of each other, and imply claim 1 is not requiring protection. The claims should be amended to afford feparation of the nature of the claimed material - If what is intended, and this is not clear, is quantitative differences, these differences are not supported, nor are they distinctive - "protecting" and "substantial" and "alteration" all being relative terms, thus requiring quantification and/or explanation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7:00 a.m. to 5:30 a.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-5628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

N. Levy:jmr

January 05, 2001

NEIL S. LEVY